*** THE HON'BLE SRI JUSTICE V.ESWARAIAH**

+ <u>WRIT PETITION NO. 6573 OF 2005</u>

% FRIDAY, THE TWENTY NINTH DAY OF APRIL,
TWO THOUSAND AND FOUR.

V.N. Sunanda Reddy.

...Petitioner.

Versus

$ The State of A.P. represented by its Secretary, Home Department,

Secretariat Buildings, Hyderabad and others.

...Respondents.

! Counsel for the Petitioner : Mr. M. Sreeramulu Reddy, Advocate.

^ Counsel for the Respondents 1 to 3: Government Pleader for Home

^ Counsel for the Respondent No.4: Mr. N. Harinatha Reddy,
Advocate

< Gist:

> Head Note:

? <u>Cases referred</u>:

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH

AT HYDERABAD

(SPECIAL ORIGINAL JURISDICTION)

FRIDAY, THE TWENTY NINETH DAY OF APRIL, TWO THOUSAND AND FIVE

PRESENT

THE HONOURABLE SRI JUSTICE V.ESWARAIAH

<u>WRIT PETITION No. 6573 OF 2005</u>

BETWEEN:

V.N.Sunanda Reddy S/o V.G.Narasimha Reddy, aged about 54

years, Occ: Managing Director of S.S.Organics Limited, G-II, Vora Towers, Madhura Nagar, Hyderabad.

…Petitioner

And

1. The State of A.P., represented by its Secretary, Home Department, Secretariat Buildings, Hyderabad.
2. The Inspector of Police, Langer House Police Station, Hyderabad.
3. The Station House Officer, Panjagutta Police Station, Hyderabad.
4. S.Srinivas Reddy S/o S.Pitchi Reddy, R/o MLA Quarters, Erramanzil Colony, Hyderabad.

…Respondents

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of Writ of Mandamus, directing the respondents 2 and 3 not to proceed with investigation in Crime No.215 of 2005 on the file of Panjagutta Police Station, Hyderabad, holding that the respondents 2 and 3 have no jurisdiction and power to entertain the complaint given by the fourth respondent herein and proceed investigation.

For the Petitioner : Mr.M.Sreeramulu Reddy, Advocate.

For the Respondents 1 to 3: G.P. for Home.

For the Respondent No.4 : Mr.N.Harinath Reddy, Advocate.

The Court made the following :

ORDER:

Heard the learned counsel appearing for the petitioner as well as the respondents.

The petitioner seeks to issue a writ of mandamus, directing the respondents 2 and 3 i.e., Inspector of Police, Langer House Police Station, Hyderabad and the Station House Officer, Panjagutta Police Station, Hyderabad not to proceed with the investigation in Crime No.215 of 2005 on the file of Panjagutta Police Station, Hyderabad, holding that they have no jurisdiction and power to entertain the complaint lodged by the 4th respondent and to proceed with the investigation.

It is the case of the petitioner that he is the Managing Director of M/s.S.S.Organics Limited, a company, which is now registered as Sick Industrial Company before the Board of Industrial and Financial Reconstruction (BIFR). The 4th respondent is one of the share holder of the company and brother-in-law of one B.Subba Reddy who is the director of the company. The company became sick and the petitioner took responsibility and improved its financial position. Though the company has been declared as sick by BIFR., during the year 1997, the rehabilitation package has undergone many changes and finally orders have been passed on 12-02-2002 granting exemption from SEBI and Stock Exchange rules for conversion of unsecured loans of promoters, friends and relatives of Rs.200 Lakhs into Equity Shares. At the time of conversion of unsecured loans into equity, the value of it was Rs.5.50 paise only when the face value was Rs.10/- and as such, the 4th respondent and his brother-in-law B.Subba Reddy started litigation. B.Subba Reddy filed O.S.No.3167 of 2004 on the file of the II-Senior Civil Judge, City Civil Court, Hyderabad seeking declaration that the allotment of 20,00,000 shares allotted by the Board of Directors on 25-4-2003 as null and void. At the instance of B.Subba Reddy, 4th respondent lodged a criminal complaint alleging that the petitioner forged and fabricated the records and a case has been registered in Cr.No.215 of 2005 on the file of Panjagutta Police Station against the petitioner and other directors. The other accused in the said crime have obtained anticipatory bails and it is stated during the course of arguments that the petitioner also obtained anticipatory bail subsequently during the

pendency of this writ petition.

It is stated that the allotment of shares was made by the Board of Director of the company under the scheme as directed by the BIFR., and therefore, if any share holder is aggrieved of the allotment, his remedy is to approach the Board constituted under the Sick Industrial Companies (Special provisions) Act, 1985 (for short 'the Act). Under Section 26 of the Act, the jurisdiction of the Civil Court is taken away. If in the course of scrutiny or implementation of the scheme, if any person who has taken part in the management of Sick Industrial Company has misapplied or became liable or accountable for money or property of Sick Industrial Company or has been guilty or any misfeasance, malfeasance or nonfeasance or breach of trust, the Board may by an order direct him to repay or restore the money or property as contemplated under Section 24 of the said Act. Under Section 32 of the Act, the provisions of the Act shall have the over riding effect over other laws except the provisions of Foreign Exchange Regulation Act, 1973 and the Urban Land (Ceiling and Regulation) Act, 1976. Therefore, the investigation by the police on the complaint of the 4th respondent is illegal in view of the special provisions contained in the said Act. Even penal provisions are provided under the said Act to punish the persons of the company for their guilt. Therefore, the complaint filed by the 4th respondent is not maintainable in law and the respondents 2 and 3 have no jurisdiction to investigate the offences.

A counter has been filed by 4th respondent stating that the complaint has not been filed at the instance or influence of B.Subba Reddy who filed the suit O.S.No.3167 of 2004 on the file of the II-Senior Civil Judge, City Civil Court, Hyderabad and the suit filed by him for wrongful allotment of shares is nothing to do with the complaint filed by the 4th respondent. It is stated that the 4th respondent lodged a complaint against the petitioner and other accused as they have misused their office in committing forgery, breach of trust and creation of documents. The allegations made in the complaint filed on 25-02-

2005 are that the 4th respondent applied for 12,500 shares in M/s. S.S.Organics Limited in the year 1994 by paying sufficient amount for the said shares and the said shares were allotted in his name in July, 1994, but the share certificates were kept in the custody of the petitioner. It is stated that the petitioner being the cousin of the 4th respondent and Managing Director of the said company, the shares were kept with him. Though the 4th respondent requested to return the shares, they have not been returned and they were in the custody of the petitioner alone. The 4th respondent came to know in the second week of January 2005 that the petitioner in collusion with other directors transferred the shares of 4th respondent, which were kept in the custody of the petitioner. It is stated that the shares of 4th respondent were transferred by forging his signatures. It is stated that the signatures of the 4th respondent on the share applications, share certificates were forged and got transferred and sold in the names of N.Gangi Reddy, R.Venu Reddy and others.

Thus, it is stated that filing of the civil suit by B.Subba Reddy which is said to have been pending is nothing to do with the criminal complaint lodged by the 4th respondent for the forgery, fabrication and the pendency of proceedings before the BIFR are nothing to do with the criminal proceedings for the offences committed by the petitioner and others.

Heard the arguments advanced by the learned counsel appearing for both the parties.

This Court while inviting the counter before admission, made an interim order, framing a question to be examined as to whether the petitioner is protected by Sections 24, 26 and 32 of the Act or not.

I have perused the provisions of the Act. Sick Industrial Company means an industrial company, which has at the end of any financial year accumulated losses equal to or exceeding its entire net worth. The Act has been enacted in the public interest, making certain special provisions with a view to securing the timely detection of sick

and potentially sick companies owning industrial undertakings, the speedy determination by a Board of experts of the preventive, ameliorative, remedial and other measures which need to be taken with respect to such companies and the expeditious enforcement of the measures so determined. Under the Act, the Board and Appellate Authority for Industrial and Financial Reconstruction have been constituted. Whether a company is a sick industrial company or not, it is for the Board to make an enquiry and take remedial measures as contemplated under Section 18 of the Act. Under Section 19 of the Act, a company can be rehabilitated by giving financial assistance. If there is no possibility of rehabilitation, proceedings can also be taken for winding up. But, during the pendency of the enquiry under Section 16 or pendency of the scheme mentioned under Section 17 or during the pendency of the appeal under Section 25, no proceedings for winding up of the industrial company or for execution, distress or the like against any of the properties of the industrial company or for the appointment of receiver in respect thereof and no suit for the recovery of money or for the enforcement of any security against the industrial company or of any guarantee in respect of any loans or advance granted to the industrial company shall lie or be proceeded with further, except with the consent of the Board or, as the case may be, the Appellate Authority. Thus, the learned counsel appearing for the petitioner submits that there is a protection to proceed against him on a criminal complaint filed by the 4th respondent. Under Section 22 of the Act, the proceedings against the company shall alone stands to be suspended. There is also a protection in favour of the management with regard to the allegations of misfeasance insofar as the manner of implementation of scheme or proposal in respect of the sick industrial company.

No doubt if in the course of scrutiny or implementation of any scheme, it appears for the Board that any person has been taken part in the promotion, formation or management of the sick industrial company including the directors, managers, employees of the sick

industrial company, for their misapplication, misfeasance, malfeasance or nonfeasance or breach of trust in relation to the sick industrial company, those persons can be directed to repay or restore the money or property, but Section 24 of the Act is nothing to do with the criminal offences committed by them. Section 26 bars Civil Court jurisdiction to entertain any suit against the orders passed in the said Act. Section 32 provides that the provisions of the Act shall have the over riding effect over the other laws and Section 33 of the Act provides that whoever violates the provisions of the Act, scheme or any order, they are liable to be punished with simple imprisonment, which may not exceed three years and shall also be liable to fine and the Courts are empowered to take cognizance on a complaint in writing by the secretary or other officer of the Board or Appellate Authority. Under Section 34 of the Act, where any offence, punishable under the Act has been committed by a company, every person who at the time the offence was committed was in charge and was responsible to the company for the conduct of the business of the company as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished according to law.

The provisions of the Act do not absolve the managing director and employees of the company from the criminal offences committed by them. In the instant case, the 4th respondent filed a criminal complaint alleging that the petitioner forged the signatures of the 4th respondent and fabricated the documents and therefore, none of the provisions of the Act protects the petitioner for the offences committed by him under the relevant provisions of the Indian Penal Code. I do not see any protection to stop the criminal proceedings for the offences committed by the petitioner who is a managing director of the company.

In the case of **M/s.BSI Ltd. And another Vs. Gift Holdings Pvt.Ltd and another** the Apex Court in Criminal Aoppeal Nos.847 of 1999 and batch held that there is no hurdle under Section 22 of the Act to

proceed against the company for the offence under Section 138 of the Negotiable Instruments Act. Section 22 of the Act envisages the stay of suits only, but not criminal prosecutions. Filing of suit by B.Subba Reddy is nothing to do with the complaint filed by the 4th respondent for the alleged forging of share certificates stood in the name of the 4th respondent.

I am also of the opinion that the Criminal Petition No.1579 of 2005 filed by N.Gangi Reddy-Accused No.4 alleging that the entire reading of the First Information Report (FIR) do not makes out a case to prosecute him is nothing to do with the contentions raised in this writ petition.

The perusal of the relevant provisions of the said Act deals with the proceedings relating to the sick industrial company alone, but nothing to do with the criminal actions committed by the petitioner or any other person who are liable to be punished for the offence under the Indian Penal Code. The criminal complaint is not against the company or against the managing director or directors in discharge of their official duties relating to the proceedings under the said Act. The criminal complaint filed by the 4th respondent is nothing to do with any of the proceedings under the said Act and it is purely a criminal liability against the person. Therefore, there is no protection for the criminal actions committed by the managing director or directors. In the instant case, the allegation is that the petitioner has forged the applications and share certificates standing in the name of the 4th respondent for the purpose of transferring in favour of other persons and therefore, there is an allegation of committing cheating. If that be so, the police is required to investigate the said complaint which is under process. Therefore, I do not see any justification to interdict the investigation by the police. I am of the opinion that there is no protection in any of the provisions under the said Act for the criminal acts liable to be punished under the provisions of Indian Penal Code and the petitioner is not entitled for any relief in the writ petition and I do not see any merits in the writ petition.

Accordingly, the Writ Petition is dismissed. No costs.

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V.ESWARAIAH,J

Date: 29-04-2005.

Shr.

Asst. Registrar.

One Fair Copy to the Honourable Sri Justice V. Eswaraiah

(For His Lordship kind perusal)

Copies to

1. The Secretary, Home Department, Government of A.P., Secretariat Buildings, Hyderabad.
2. The Inspector of Police, Langer House Police Station, Hyderabad.
3. The Station House Officer, Panjagutta Police Station, Hyderabad.
4. Two CCs., to G.P., for Home, High Court Buildings, Hyderabad

(OUT).

5. 8 L.R. Copies.
6. The Under Secretary, Union of India, Ministry of Law, Justice and

Company Affairs, New Delhi.

7. The Secretary, A.P. Advocates Association Library, High Court Buildings, Hyderabad.

8. Two C.D. Copies.